

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

WILLIAM PHILLIP McMUNN,

3:09-CV-00594-PK

Petitioner,

ORDER

v.

MARK NOOTH,

Respondent.

BROWN, Judge.

Magistrate Judge Paul Papak issued Findings and Recommendation (#45) on May 9, 2011, in which he recommended the Court deny Petitioner William Phillip McMunn's Amended Petition (#14) for Writ of Habeas Corpus, enter a judgment dismissing this case with prejudice, and deny a certificate of appealability. Petitioner filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

Petitioner objects to the Magistrate Judge's findings that the Court should not consider Petitioner's Exhibits A-D and that an evidentiary hearing was not required. Petitioner, however, does not state the grounds on which he bases his Objections. As the Magistrate Judge noted in his Findings and Recommendation, the Supreme Court has held

review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits. Section 2254(d)(1) refers, in the past tense, to a state-court adjudication that "resulted in" a decision that was contrary to, or "involved" an unreasonable application of, established law. This backward-looking language requires an examination of the state-court decision at the time it was made. It follows that the record under review is limited to the record in existence at that same time i.e., the record before the state court.

*Cullen v. Pinholster*, 131 S. Ct. 1388, 1398 (2011). The Magistrate Judge, therefore, properly declined to consider Petitioner's Exhibits A-D that were not before the state court and declined to hold an evidentiary hearing related to those Exhibits.

The balance of Petitioner's Objections reiterate the

arguments contained in his Brief in support of his Amended Petition and his Reply in support of his Amended Petition. This Court has carefully considered Petitioner's Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

**CONCLUSION**

The Court **ADOPTS** Magistrate Judge Papak's Findings and Recommendation (#45), **DENIES** Petitioner's Amended Petition (#14) for Writ of Habeas Corpus, **DISMISSES** this case **with prejudice**, and **DENIES** a certificate of appealability.

IT IS SO ORDERED.

DATED this 10<sup>th</sup> day of August, 2011.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge